



PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS AND INTERFERENCES**

Application No. : 09/862,502 Confirmation No.: 7223
Applicant : Gerhard Dittrich
Filed : May 23, 2001
Title : METHOD FOR PROVIDING MEASURED VALUES
FOR END CUSTOMERS
TC/A.U. : 3621
Examiner : C.O. Sherr
Docket No. : DITT3001 /FJD
Customer No. : 23364

BRIEF ON APPEAL

Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22202-3514

Sir:

INTRODUCTORY COMMENTS

Pursuant to the provisions of 37 CFR 41.37, submitted herewith is Applicant/Appellant's Brief on Appeal. The period for response has been extended to April 21, 2005 by filing a Petition for a One Month Extension of Time and payment of the required fee.

Any additional fees necessary for this appeal may be charged to the undersigned's Deposit Account No. 02-0200.

REAL PARTY IN INTEREST

(37 CFR 41.37(c)(1)(i))

The real party in interest is Applicant/Appellant's assignee Endress + Hauser GmbH + Co. The assignment was recorded on May 23, 2001 at Reel 011839 and Frame 0101.

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RELATED APPEALS AND INTERFERENCES

(37 CFR 41.37(c)(1)(ii))

There are no related appeals or interferences with respect to the invention defined in this application.

STATUS OF CLAIMS

(37 CFR 41.37(c)(1)(iii))

This application contains claims 1 - 26.

Claims 1 - 7 have been cancelled.

Claims 8-26 have been finally rejected and are on appeal.

STATUS OF AMENDMENTS

(37 CFR 41.37(c)(1)(iv))

No response or amendment was filed after issuance of the final Office Action of October 20, 2004.

SUMMARY OF CLAIMED SUBJECT MATTER

(37 CFR 41.37 (c)(1)(v))

(References are to page and line of the specification)

The invention relates to a method for providing measured values for end customers, (pg. 1, lines 3 and 4). In process automation, field transmitters are widely used which regulate or control process cycles in production plants, (pg. 1, lines 6-8). Generally field transmitters are connected to a process control system by means of a data link, (pg. 1, lines 22-25).

The data link is used to forward the measured values supplied by a sensor to the process control system, (pg. 1, lines 30-32).

According to the method, a measured value is recorded using a sensor. This measured value is transmitted to a process control system. The number of transmission operations is counted and the cost to the end customer are calculated on the basis of the number of transmission operations, (pg. 3, line 12-22).

As noted in the example of Fig. 2, a process variable is measured by a pick-up MWA. This measured value is digitized in an A/D converter. The measured value pick-up MWA and the AD converter are connected to one another by a data line DL5'. The measured value is forwarded from the A/D converter to a computer unit RE over a data line DL4'. The computer unit RE transfers stored measured values either cyclically or at the request of the process control system PLS to a communications unit KE over data line DL3'. The communications unit KE converts the measured values into a telegram which is passed to the data bus line DBL over a data line DL2' and via a field bus interface FB52, (pg. 5, lines 19-31).

The telegram contains the digitized measured value as well as information relating to the transmitter and to the receiver in the form of data bus addresses DA which uniquely identify each data subscriber, (pg. 5, lines 36-38 to pg. 6, lines 1 and 2). If, for example, the process control system PLS sends a telegram to the temperature sensor S1, then the data bus address of the temperature sensor S1 is the receiver address, and the data bus address of the process control system PLS is the sender address, (pg. 6, lines 8-13).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL
(37 CFR 41.37(c)(1)(vi))

Claims 8-26 are rejected under 35 U.S.C. 102 (a) as anticipated by Carrier Corporation (EP 0 883 048 A1).

ARGUMENTS

(37 CFR 41.37(c)(1)(vii))

The Examiner in the quoted passage recites three (3) of the four (4) steps recited in claim 8 and then refers applicant/appellant to a portion of the '048 Patent which has nothing to do with the present invention. The portion of the '048 Patent referenced by the Examiner does not mention sensors like sensors S1, S2, S3. Page 4 of the '048 Patent mentions sensors 46-62, which provide information to an I/O bus 42 and from there to a processor 44. But this disclosure cannot match the four (4) steps recited in claim 8.

Applicant/Appellant cannot find in the '048 Patent the counting and cost calculating steps. It is also silent on any application to end users.

As noted in the Response filed to the initial Office Action, a reference cannot anticipate a claim unless it discloses all of the steps recited of the rejected claims, claims 8 and 26 are in independent form. Accordingly, if EP 0 833 048 A1 (hereinafter '048 Patent) does not anticipate these claims, it cannot anticipate any of the dependent claims as well.

With respect to claims 8 and 26, the Examiner states in the final rejection:

Carrier Corp. discloses a method for providing and selling measured values for end customers, comprising the steps of recording a measured value for a process variable using a sensor S1, S2, S3; counting the number of transmission operations; and calculating the costs for the end customer on the basis of the number of the transmission operations.

Citing "pg. 3, lines 40-45" of the '048 Patent.

U.S. Pat. Appl. 09/862,502

The case law on this point are numerous and need not even be cited.

It is Applicant/Appellant's position that the case for anticipation under 35 U.S.C. 102 has not been made for claim 8, or for claim 26; and as a result for claims 9-25 as well.


The Board is urged to reverse the Examiner, and remand this application to the Examiner while finding claims 8-26 not anticipated by the '048 Patent.

CONCLUSION

In view of the above, it is respectfully submitted that claims 8-26 should be allowed over the references of record and those applied.

Respectfully submitted
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Date: April 21, 2005


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APPENDIX OF CLAIMS
(37 CFR 41.37 (c)(1)(viii))

Claims 1-7 (Cancelled)

8. A method for providing a measured values for end customers, comprising the steps of:

recording a measured value for a process variable using a sensor S1, S2, S3;

transmitting the measured value to a process control system PLS;

counting the number A of transmission operations; and

calculating the costs for the end customer on the basis of the number A of the transmission operations.

9. The method as defined in claim 8, wherein the data transmission between sensor S1, S2, S3 and the process control system PLS takes place in line-conducted fashion, using, for example, a data bus system DBS.

10. The method as defined in claim 8, wherein the data transmission between sensor S1, S2, S3 and the process control system PLS takes place by radio.

11. The method as defined in claim 8, wherein the number A is stored in the sensor S1, S2, S3.

12. The method as defined in claim 9, wherein the number A is stored in the sensor S1, S2, S3.

13. The method as defined in claim 10, wherein the number A is stored in the sensor S1, S2, S3.

14. The method as defined in claim 8, wherein the number A is stored in process control system PLS.

15. The method as defined in claim 9, wherein the number A is stored in process control system PLS.

16. The method as defined in claim 8, wherein the measured values are transmitted over the internet from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which data base at the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted.

17. The method as defined in claim 9, wherein the measured values are transmitted over the internet from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which data base at the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted.

18. The method as defined in claim 10, wherein the measured values are transmitted over the internet from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which data base at the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted.

19. The method as defined in claim 11, wherein the measured values are transmitted over the internet from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which data base at the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted.

20. The method as defined in claim 12, wherein the measured values are transmitted over the internet from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which data base at the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted.

21. The method as defined in claim 8, wherein the measured values are transmitted by radio from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which data base at the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted.

22. The method as defined in claim 9, wherein the measured values are transmitted by radio from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which data base at the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted.

23. The method as defined in claim 10, wherein the measured values are transmitted by radio from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which data base at the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted.

24. The method as defined in claim 11, wherein the measured values are transmitted by radio from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which data base at the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted.

25. The method as defined in claim 12, wherein the measured values are transmitted by radio from the sensor S1, S2, S3 to a database at the field transmitter manufacturer, to which data base at the end customer likewise has access over the internet, and wherein the number of database access operations by the end customer to this database is counted.

26. A method for selling measured values to end customers, comprising the steps of:

recording a measured value for a process variable using a sensor S1, S2, S3;

transmitting the measured value to a process control system PLS;

counting the number A of transmission operations; and

calculating the costs for the end customer on the basis of the number A of the transmission operations.